Statement of
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on behalf of the
PIRO/MANSO/TIWA INDIAN TRIBE,
PUEBLO OF SAN JUAN DE GUADALUPE,
LAS CRUCES, NEW MEXICO

Submitted to the
SENATE INDIAN AFFAIRS COMMITTEE

Regarding
S. 611,
INDIAN FEDERAL RECOGNITION ADMINISTRATIVE PROCEDURES ACT

May 24, 2000

The Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe of Las Cruces, New Mexico is honored to submit this testimony on S. 611, the Indian Federal Recognition Administrative Procedures Act, on behalf of the people of our tribe.

The Piro/Manso/Tiwa Indian Tribe descends from three aboriginal tribes -- the Piro, the Manso and the Tiwa -- whose ancestors were from the Mogollon and Mimbreno cultures of central and southern New Mexico. Piros and Tompiros abandoned their Pueblos in Salinas Valley in the late 1600s due to Spanish incursions, peonage, drought and famine. During the Pueblo Indian Revolt of 1680, the Spanish relocated the Piros along with the Tiwa Indian captives from Isleta Pueblo to the

Catholic Missions in what became the El Paso del Norte area of Texas. The Mansos, who already had settled in the Mesilla Valley and northern Mexico by the time of European contact, were forced to live at Guadalupe Mission in Juarez, Mexico around the same time. Before the signing of the Treaty of Guadalupe Hidalgo, our Caciques, or traditional religious leaders, relocated 22 Piro, Manso and Tiwa families to the territory of what became New Mexico and Las Cruces.

The genealogical evidence submitted in our petition shows that each of the 206 tribal members on the Tribal Roll derives from one or more of these 22 distinct full blood Piro, Manso, and / or Tiwa Indian lineages. In addition, today more than 75% of enrolled tribal members reside within the 8 square mile area in or near the old community in Las Cruces, near the plaza and home of the Cacique, our religious leader.

The Piro/Manso/Tiwa Tribe, although unrecognized, is a traditional Pueblo -- the only one in the administrative process for recognition. As a traditional Pueblo, we have our own Indian military and civil governing structures. Our Cacique, who serves for his lifetime, carries the core of thousands of years of tribal traditions and ceremonies. The position of Cacique is documented in Spanish, Mexican and American records as being in my family for 300 years, or since the late 1700's. My father served as Tribal President for over 25 years, and my uncle was the Cacique from 1935 until his death in 1978. Their father, my grandfather, is cited in the Las Cruces newspaper as the "Cacique of the Pueblo Indians in Las Cruces" in 1908. It was during his tenure, from 1890 to1910, that the Tribe received Federal services as an Indian tribe, and when over 110 children from our Pueblo were taken to Indian boarding schools in Albuquerque, Santa Fe, California, Oklahoma, and Arizona, even over the objections of their parents, because they remained "in tribal relations." In addition to our traditional structure, since 1965, we have had a Tribal Council form of government, which combines the administrative and traditional offices of the Pueblo under the guidance of the Cacique.

The Piro/Manso/Tiwa Tribe offers the following comments on the process for federal recognition and S. 611, the Indian Federal Recognition Administrative Procedures Act.

The first is that the current recognition process in the Branch of Acknowledgment and Research (BAR) within the Bureau of Indian Affairs (BIA) is lengthy, literally taking generations. In 1971, a man who was to become a Congressman and Secretary of the Interior, Manuel Lujan, encouraged me to work to put together the Tribe's story and to petition the federal government to recognize us. The Tribe submitted a documented petition to the Department of the Interior in 1971,

and submitted a revised petition under 25 C.F.R. Part 83 in 1992. We have submitted sufficient documentation to the BIA to qualify for “active consideration” of our petition, and we are currently seventh on the list of petitioners who are ready and waiting for "active consideration."

Secondly, the federal acknowledgment process is too expensive. Where is an impoverished unrecognized tribe supposed to get $1 million for professional services needed to make it through the process? The current process too often forces tribes to mortgage their future by finding investors that will benefit from economic development opportunities once the tribe is recognized. However, tribes are then criticized or ridiculed for finding financial supporters. Accusations are made that the tribe is seeking recognition only for financial gain. However, the tribe is merely trying to find the necessary resources that the process demands. Also, most of the financial assistance that an unrecognized tribe receives from either grants or private investors usually does not have any short term impact or direct benefit since money is spent on legal services and social science research. In other words, funds are rarely spent on the local community during the recognition process since most consultants are non-tribal members who do not reside in the local area. Unrecognized tribes have very few options when it comes to finding the money necessary to pay for the recognition process.

Thirdly, as the Committee may know, many aspects of Pueblo life -- our traditions and ceremonies, our religious practices and sites -- are traditionally not revealed to outsiders. To do so is a violation of our traditions and our elders’ teachings. This is true of our Pueblo. The Piro/Manso/Tiwa Tribal Council, war captains and tribal community debated long and hard about whether or not tribal members could or would publicly talk about a wide range of issues that the BAR process requires any petitioner to address, and whether to allow others to investigate, write up, and disclose to non-members the kinds of information that is required in our petition. Much of the information required by the BAR about our traditions, our leaders, the highly personal and sensitive internal governmental issues in which the Tribe has been involved, we have documented in our petition ONLY at great cost and personal risk for the individual members and because without such evidence, we cannot prove the mandatory criteria for recognition. We as a tribal community have suffered when the information in our petition has, on occasion, been released by BAR to outsiders.

Not only are unacknowledged tribal religious leaders asked to disclose sacred sites, ceremonial practices, and sacred knowledge in order to prove the cultural validity of the people, which goes against every instinct and norm which says that this information is not to be shared, filmed, or recorded in any way. Unrecognized tribes are also asked to document very personal, private, sacred, painful, personal, family, clan information which no other person in the United States is forced to disclose.

Petitioners are asked about family memories and information about deceased individuals which may include memories of abuse, abandonment, or other family problems. There is never any thought given to what the emotional effects are of asking people to recall these memories for the public record.

While we understand the goal of the current acknowledgment criteria which require evidence of social interaction and political influence and participation, the criteria are inherently flawed since social interaction or the existence of community life is 1) very difficult to quantify; 2) highly subjective; and 3) may be a poor or insignificant indicator of a tribe's activity. How can people within a tribe prove to the BIA (in terms that they feel is sufficient) whom one talks to, interacts with, or has ties to on a daily, weekly, monthly, and yearly basis? At what level does a conversation or interaction become proof of tribal existence? And then at what point does a lack of conversation or interaction mean that a tribe does not exist? Who decides and what guidelines are being used to make these decisions? The benchmarks or theoretical paradigms should be consistent, based on scientific indicators, and made public.

Under the criteria, unrecognized tribes are essentially required to be more functional than any other society in America. Unrecognized tribes are supposed to have high levels of political participation and interaction across family lines that perhaps no federally-recognized tribe in the country has. On any given reservation or Indian community, neighbors who live two or three houses away from each other may not interact with each other for months or even years. On larger reservations, people may not even know who lives 20, 30, or 40 miles away and may never interact with that person, whether they be a family member or not. The truth is that sometimes people just don't like each other and choose not to talk to one another. This is true for unrecognized tribes also. But for an unrecognized tribe, people not liking each other or not talking to each other for personal reason can be taken by the BAR to prove that a tribe does not exist.

In the area of political participation, in the United States only 33% of the people on the average vote in the presidential election. Sometimes the candidates do not receive a majority of the vote. This means that the President of the United States can be elected by less than 15% of the people in the country. Does this mean that the United States of America is not really a sovereign nation or that it does not have a working government? Unrecognized tribes are like any other community; however, BIA assumes that political apathy on the part of some tribal members proves that there is no tribal government and therefore the tribe does not exist. This is highly flawed.

Turning specifically to the legislation, while we strongly support the intent of S. 611 to make the process for acknowledgment fairer and more streamlined, we are

concerned that the procedures, timeframes and deadlines in the bill seem to reflect the doubtful presumption that there is no difference between the burdens and tests prescribed in the current 25 C.F.R. Section 83 process and S. 611. Under S. 611, sec. 5(a)(3), "all petitions pending before the Department" would be transferred to the new Commission. Fourteen petitions are now on active consideration before BAR, some of whom already have a preliminary determination and are awaiting a final determination, or are in litigation. Eleven are waiting for active consideration, while another 47 petitions have been submitted in part but remain incomplete. There also are 103 letters stating their intent to submit a petition, but lacking adequate documentation. While many of these groups have documentation, many have not assembled this material in a coherent narrative form that would comply with 25 C.F.R. Section 83, let alone with S. 611, and it is unlikely that many of these petitioners have conducted as yet the complex social networking analysis which would show they meet the mandatory criteria under the current 25 C.F.R. Part 83 process. It is very likely that many of those candidates who now have only letter petitions, regardless of the merits of their cases, will never be able to complete a petition in eight years, and that it will not be possible for the Commission to process their petitions in twelve years.

Meanwhile, those whose petitions are ready and awaiting active consideration today may also have problems with the transfer of their petitions to the Commission, due to the truncated timelines and increased burdens S. 611 would impose. The primary advantage the Act offers petitioners is an independent Commission and staff that would process our petition, instead of the BAR staff. To us it appears that S. 611 may require a petitioner to go back and reorganize, relabel or redraft, or even redact materials, and then amend and resubmit narratives, documentation and exhibits to make sure these petition submissions fit properly within the new format and new regulatory requirements to be developed by the Commission on Indian Recognition. While emphasizing that petitioners remain responsible for their own research tasks, S. 611 as written would allow the Commission to do additional research by its own staff to extract quantitative data from petition submissions. The staff may need to do substantial work to reorganize petitions transferred from BAR in order to conduct analysis consistent with new regulatory requirements under the Act. The S. 611 process would impose substantially different evidentiary burdens on petitioners, and in many cases, would require petitioners not only to amend, but essentially to redraft their petitions during the narrow 90-day period allotted for the transfer of certain petitions from BAR to the Commission.

For example, under S. 611, the statement of facts regarding identification as an Indian entity actually goes back further in time -- to 1871 -- than the current regulations. 25 CFR 83.7 (a) requires evidence that the petitioner has been identified as an Indian entity on a substantially continuous basis only since 1900. In many cases, petitioners

that were advanced in their research by 1994 have provided BAR with the evidence they need to meet the tests of identification, political existence and community activity back to 1871 or earlier, knowing that the BAR could decide to challenge the petitioner based on what happened before 1900. However, by moving the goal posts back to 1871 for proving community / political continuity in S. 611, Congress will virtually assure that petitioners who may be ready for active consideration under the present rules at 25 C.F.R. Section 83 (1994, with procedural changes of February 11, 2000) will not meet the 90-day deadline for amending or submitting petitions that S. 611 imposes for its purposes. For many petitioners, this change would require more work, greater risk, and less likelihood of success.

By contrast, one difference between S. 611 and legislation introduced by Delegate Faleomavaega, H.R. 361, is that the House bill uses the date 1934 for identification as Indian, community and political influence. The date 1934 was selected by a working group of non-recognized tribes. According to the Senate bill, that date would not be acceptable.

At the National Archives in Record Group 75, Records of the BIA, Central Classified Files, Records of IRA Reorganization, 4894-1934-066, Anthropology Section, is a set of scholars' responses to Questionnaire of November 20, 1933, Part 10-A. The BIA sent out a survey and accumulated this set of anthropological studies and survey responses, and relied on them to determine which Indian entities were eligible to reorganize under the Indian Reorganization Act. Many of those "studies" were superficial and marginally informative. If tribes were left out of consideration for reorganization because the BIA ignored them in 1934, particularly on the basis of these "studies," the threshold should be moved to1934.

Under S. 611, the petitions under active consideration would remain with the Department; the BIA would transfer the rest to the Commission, which would start work at once on those petitions waiting for active consideration. Sec. 6(a)(2)(B) of the bill would give petitioners with letter petitions only 90 days to submit an "amended" or completed petition. Otherwise, they have to start all over under the new process, and complete the submissions in eight years under Section 5(d), and the Commission would have to act no later than 4 years later. It seems not unlikely that the crest of the wave of submissions could hit the Commission at or about the eight year limit, and at that point, facing fixed deadlines for acting on the petitions then pending, the Commission could easily choke on paper. Perhaps something should be done to address these petitions that consist of letters of intent only, as opposed to documented petitions, with a separate set of deadlines, if that is possible. Otherwise, this Act would provide closure for the United States and opposing third parties, not for the petitioners.

The intent of the February 11, 2000 changes in BAR procedures approved by the Assistant Secretary - Indian Affairs appears to be to limit circumstances in which a petition could languish. Under S. 611, cases which are transferred from BAR will be accelerated on a parallel track before the new Commission. If the perception is wrong that the February 11, 2000 changes to the BAR procedures will accelerate the processing of petitions still pending before BAR, it might be necessary to transfer the remaining petitions which are on active consideration before BAR at the effective date of the Act to the Commission in order to finish them properly.

Another point is that the role of “interested parties" in the Federal acknowledgment determinations is reflected throughout the portions of S. 611 that address processing, and all levels of appeal of cases. At Section 6 (2)(b), Special Provisions for Transferred Petitions -- Others, the bill provides: "In addition to providing the notification required under subsection (a), the Commission shall notify, in writing, the Governor and attorney general of, and each federally recognized Indian tribe within, any State in which a petitioner resides." At (c) (2), Opportunity for Supporting or Opposing Submissions, (A) provides that each notice published under paragraph (1) shall include, in addition to the information described in subsection (a), notice of opportunity for other parties to submit factual or legal arguments in support of or in opposition to, the petition. Under (B), "A copy of any submission made under subparagraph (A) shall be provided to the petitioner upon receipt by the Commission," and at (C), "The petitioner shall be provided an opportunity to respond to any submission made under subparagraph (A) before a determination on the petition by the Commission." Section 7 deals with processing, and (a)(3)(B) allows the consideration of any submissions by interested parties in support of or in opposition to the petition. Section 8 (a), providing for a preliminary hearing on petition submissions, provides that "the petitioner and any other concerned party may provide evidence concerning the status of the petitioner." Within 30 days, under (b)(1)(A), the Commission shall make a determination to extend Federal acknowledgment as an Indian tribe to the petitioner, or under (B), a determination that provides that the petitioner should proceed to an adjudicatory hearing.

There appears to be a great and explicit solicitude without qualification toward the concerns of third parties in S. 611. Third parties / interested parties should have something definite at stake in order to get involved in a recognition determination. Under the present process, it is far too easy for thin, libelous, and untested claims to be accorded inordinate weight against a petitioner.

A related weakness of the current process is that on occasion, third parties consisting of “rump groups” or splinter groups claiming some association or right of affiliation with the petitioner can make claims to be the petitioner, or against the

petitioner, and virtually derail a petition. The BAR process also has accorded the claims of such “rump” or splinter groups varying degrees of credibility. However, BAR offers little practical alternative to disposing of such claims except to consider them simultaneously. Once a tribe goes on “Ready” or “Active Consideration,” another party can claim the petition as their own. They can obtain large portions of the petition submissions under the regulations and the Freedom of Information Act, then resubmit it (with some or few revisions) as their own.

In our own case, we have pressed for protection of the privacy of our individual members and of our cultural heritage, and gradually negotiated with BAR to protect these materials, relying not only on 25 C.F.R. Section 83 and the Privacy Act of 1974, but on such things as the limits imposed on the Tribe's use of sensitive materials by applicants for membership at the time they signed privacy waivers as part of the Tribe's membership application process.

Of the tribes on “Active” and “Ready” before BAR today, there are several splits and factions; and instead of requiring new factions to start over in the process, the BIA simply adds their petition to “Ready” or “Active” list, which means the new factions get to bypass all of the other tribes. The result may be the recognition of two opposing groups, but more likely will be the denial of both, unless the original petitioner is extremely fortunate. Perhaps it would be more equitable that when any "new" factions (groups that formed as recently as the most recent amendments to the 25 C.F.R. Section 83 regulations, February, 1994), or if a group "withdraws" from an original petitioner and wants to be considered for Federal recognition, it should be mandatory that the new group start at the bottom of the process. Practically speaking, this may be impossible without injustice to the petitioner with paramount claims, regardless whether their petition was submitted or completed first.

Third parties that deliberately submit what proves to be knowingly false or misleading testimony against a petitioner should be held liable for such false representations. Earlier versions of acknowledgment reform legislation discouraged such misrepresentations in third party claims or submissions against petitioners. At present, our alternatives include lengthy litigation or perhaps the remedy of prosecuting third parties for mail fraud.

Finally, Section 3 (26) of S. 611 defines "treaty," but does not seem to make the definition broad enough to include agreements between tribes and colonial or territorial governments that were predecessors to the U.S. government. It says:

(26) TREATY- The term “treaty” means any treaty--

> (A) negotiated and ratified by the United States on or before March 3, 1871, with, or on behalf of, any Indian group or tribe;
> (B) made by any government with, or on behalf of, any Indian group or tribe, from which the Federal Government subsequently acquired territory by purchase, conquest, annexation, or cession; or
> (C) negotiated by the United States with, or on behalf of, any Indian group in California, whether or not the treaty was subsequently ratified.

The term "treaties" should include executive orders, and other documented alternative agreements or arrangements, and be consistent with the international conventions regarding agreements and arrangements alternative to treaties between indigenous peoples and colonial governments. The 18 unratified treaties the United States made with California Indian tribes provide well-known examples. Because the United States historically created reasonable expectations on the part of Indian tribes that they were subject to Federal jurisdiction, Congress should revisit such cases as instances of previous unambiguous Federal recognition. Where the Secretary and the BIA decided without congressional action to remove all Federal supervision and services from such groups, their acknowledgment should be expedited.

The final point we wish to make is that the status of an unrecognized tribe is that of second class in many ways. One particular example for Piro/Manso/Tiwa is the Native American Graves Protection and Repatriation Act or "NAGPRA." The Piro/Manso/Tiwa Tribe is culturally affiliated with and lineally descendant from the Piro Pueblos and cultures of the Salinas Pueblo Missions National Monument in Mountainair, New Mexico. Several years of discussions with the Monument led to the reburial of three partial Piro Indian human remains at Gran Quivira, which is part of Salinas Pueblo Missions Monument, in 1995.

However, last summer, Salinas Monument abruptly ended these discussions when they were advised that they do not have to include Piro/Manso/Tiwa in discussions regarding the reburial and repatriation of the Piro remains and objects of cultural patrimony held by the Monument and remains located at the San Diego Museum of Man, because we are not recognized. Instead, federally-recognized tribes will determine the disposition of those remains, even though 90% of the remains at Salinas are Piro.

Recently, in California, the Choinumni Tribe, Wuckchumne Tribe, Wuksache Tribe, and Dunlap Band of Mono have been fortunate in obtaining the cooperation of

neighboring and culturally-related tribes in their efforts to secure the return of bones and funeral items for reburial when requested. Where such cooperation is not available, particularly where neighboring tribes are traditional foes of a Federal acknowledgment petitioner or a terminated tribe, the NAGPRA Review Committee only tells such a group to come back when they are recognized. Meanwhile, while the recognition process drags on, opposing parties can see to it that the remains and funerary items are disposed of against the interests and wishes of the petitioner or terminated tribe. This interpretation of the intent of NAGPRA does nothing to advance the interests that NAGPRA was intended to serve.

Having suffered the inequities and detriment of Federal recognition in the past -- when two generations of Piro/Manso/Tiwa children were forcibly removed from their homes and sent to Indian boarding schools -- only to be pushed off the table like an abandoned stepchild, we deserve the opportunity to pursue our own destiny and protect our heritage as a federally acknowledged Indian Tribe, and that is what we ask of this Congress. The Piro/Manso/Tiwa Indian Tribe, Pueblo of San Juan de Guadalupe, thanks you for the privilege of the invitation to submit testimony on this important legislation.